

UNITED STATES OF AMERICA,

V.

ENRIQUE MARTINEZ-GONZALEZ,

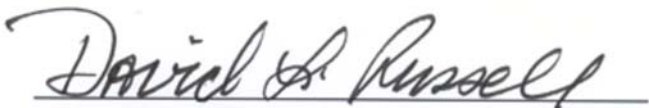
Defendant.

Case No. CR-13-263-R

Before the Court is Defendant's Motion to Modify and Reduce Sentence (Doc. No. 35). Therein he contends that the fifty-seven-month sentence imposed by the Court on January 29, 2014 is improper, because his prior conviction for a drug-related offense was erroneously characterized as "drug trafficking" and a 16-point enhancement was applied for purposes of calculating his sentence. In support of the instant motion Defendant cites to three Supreme Court cases, each decided prior to his sentencing. Defendant does not cite to any authority that would permit the Court to reduce his sentence. Defendant does not indicate in the instant motion that he is seeking relief under 28 U.S.C. § 2255, and such relief would appear foreclosed by the applicable one-year limitations period. Furthermore, the motion does not raise issues that implicate the Court's authority to modify a sentence pursuant to 18 U.S.C. § 3582. Defendant is hereby ordered to inform the Court as to the jurisdictional basis for his motion. The Court will not construe his motion as having been filed pursuant to 28 U.S.C. § 2255 without advising Defendant because of the limitation on filing such motions. *See Castro v. United States*, 540 U.S. 375, 383 (2003)(requiring

notice and warning to pro se litigant before recharacterizing a pleading as a § 2255 motion including warning that such construction will subject the movant to the restrictions on ‘second or successive’ motions, and providing an opportunity to withdraw the motion or to amend it so that it contains all the § 2255 claims he believes he has). Accordingly, the Court hereby informs Defendant of its intention to convert his Motion to Modify and Reduce Sentence as a motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255 unless Defendant indicates his desire to withdraw the motion. Defendant shall, not later than November 9, 2016, inform the Court of whether he intends to either: (1) proceed with the converted motion and raise no additional issue; (2) proceed with the motion with additional issues, which he shall raise and brief not later than that same date; or (3) withdraw the instant motion. Defendant is also forewarned of the limitation on second or successive motions.

IT IS SO ORDERED this 20th day of October, 2016.


DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE